

France implements anti-fraud measures requiring certain VAT registered businesses to use certified software or systems to record payments

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Executive summary

As from 1 January 2018, taxable persons subject to VAT who record their customers' payments via accounting or management software or cash register systems, will be required to use certified secure software or systems that meet conditions of data inalterability, security, retention and archiving. This is a new anti-fraud measure.¹

Detailed discussion

This legal requirement, which, in principle, would only concern taxable persons subject to VAT on the transactions that they perform (non-taxable VAT-exempt persons, such as companies in the banking, insurance, education and health sectors for example, are in theory excluded), is not limited to cash register software and cash payments. It concerns all software/ERPs that register payments made by customers, whether they be private individuals or businesses: cash, checks, transfers, etc. The measure applies both to software purchased from a third party software publisher (located in France or abroad) and to software developed by the taxpayer in-house. Failure to comply with the requirement exposes a company to a fine that may be re-applied until proper compliance is assured (see below).

It is possible to demonstrate the security of the payment process, and therefore compliance of the software with VAT regulations, in two ways (self-certification not being explicitly provided for by this measure):

- ▶ The company may have the payment software or systems used certified by an accredited organization.
- ▶ The company may obtain an individual certificate from the publisher of the payment or cash register software certifying compliance with the conditions of data inalterability, security, retention and archiving. The individual certificate issued by the publisher must conform to the template produced by the French Tax Administration.

The publishers currently appear to diverge in their approach depending on whether they sell cash register software or payment software/modules. Some consider - rightly or wrongly - that the payment software they sell can be configured and developed internally by users, and that therefore certification is specific to each company. Consequently, few appear to be prepared to issue compliance certificates.

The main conditions to be met in order to obtain certification are as follows:

- ▶ The accounting or management software or the cash register system must allow the Tax Administration to access the original data initially recorded, as well as the dated details of the transactions and any corrections made to the data.
- ▶ The security of the accounting or management software or the cash register system must be guaranteed by any reliable technical process, i.e., a process capable of guaranteeing that payment collection data can be restored to the state in which they were originally recorded.
- ▶ The accounting or management software or cash register system must provide for at least one annual accounting close. The cash register systems must also provide for a daily and a monthly close. For each close, cash register systems must calculate aggregated and summary data that have integrity and cannot be altered.
- ▶ Either data retention is carried out online in the software application or system, or the data is archived under the conditions defined by the Tax Administration.
- ▶ The accounting or management software of the cash register system must enable the archiving of the data recorded in compliance with the conditions set by the Tax Administration according to a defined frequency, at least annually or by accounting period.

In the event of failure to be able to demonstrate that the software or cash register system used complies with the conditions provided for by law (by the production of a certificate or an individual certificate), the VAT taxpayer is liable to a fine of €7,500 per accounting or management software application or cash register system concerned. When the fine is applied, the taxpayer then has 60 days in which to comply with the obligation. After this deadline, the Tax Administration may issue another request and if the taxpayer is unable to produce the supporting evidence required, the fine may be applied again.

Implications

This new measure, with its commendable anti-fraud objectives, raises many questions among companies in view of its very broad scope: ultimately, it concerns all software currently used by companies to register sales payments, and not only companies in contact with the public (trade and mass retail outlets, catering and hospitality, etc.).

In addition, numerous software applications have been created or extensively developed by companies to meet their specific needs, and in the absence of any self-certification process, certification by an accredited organization is going to be costly, in terms of both implementation and recurrence (in the first place, any modification should result in the updating of certification).

Finally, if the €7,500 fine is to apply per software application and per legal entity, when an application is used by several entities in the same group, the risk of a fine may be disproportionate in relation to the anti-fraud objective (for example, if a group with 100 subsidiaries uses the same uncertified "in-house" software, the fine risk would amount to €4.5 million for a single year).

Curiously enough, the measure, whose initial objective was to "clean up" the market of overly permissive software publishers, is in danger of missing its target, for at present it is the user-customers who find themselves with uncertified software for which they alone have to bear the risk of a fine. Publishers who do not certify their software are not subject to any penalty.

The Tax Administration's commentaries on the implementing rules and the technical aspects of the new arrangements for the certification of cash register software should clarify some of these issues. The Administration should in principle publish some answers to frequently asked questions in June 2017, due to be updated in October 2017.

Endnote

1. This legislative measure is set out in article 286-I- 3 *bis* of the French Tax Code, in the chapters devoted to VAT: on the face of things, this measure thus appears above all to be aimed at combating VAT fraud. However, it appears likely that if the Tax Administration were to find that a “permissive” software application made it possible to evade taxation of certain revenues, it would also draw relevant conclusions with respect to Corporate Income Tax.

For additional information with respect to this Alert, please contact the following:

Ernst & Young Société d'Avocats, Nantes

▶ Gwenaëlle Bernier +33 2 51 17 50 31 gwenaelle.bernier@ey-avocats.com

Ernst & Young Société d'Avocats, Lyon

▶ Laurence Bouchard-Plottin +33 4 78 63 17 13 laurence.bouchard-plottin@ey-avocats.com

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